



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Increasing Fee for Returned Check Charges from \$10.00 to \$25.00 for Each First Returned Check and Increasing Late Fees for 30-Day Past Due Utility Bills from \$5.00 to \$10.00. (FIN)

MEETING DATE: July 16, 2003

PREPARED BY: Finance Director

RECOMMENDED ACTION: Adopt resolution increasing fee for returned check charges from \$10.00 to \$25.00 for each first returned check and increasing late fees for 30-day past due utility bills from \$5.00 to \$10.00.

BACKGROUND INFORMATION: In 1997, the City Council adopted resolutions numbers 135 and 184 setting fees for returned checks and 30-day past due utility bills as noted:

	<u>Current</u>	<u>Proposed</u>
First returned check (within 12 month period)	\$10.00	\$25.00
Second returned check	\$25.00	(no change)
Current utility bill	Utility Rate only	(no change)
30 day Past Due	Utility Rate plus \$5.00 late charge	\$10.00
60 day Past Due	Utility Rate plus \$15.00 late charge	(no change)
90 day Past Due	Utility Rate plus \$25.00 late charge	(no change)

The primary goal of the proposed increase in fees for the first returned check and the 30-day past due utility bill is to encourage customers to address payment problems before the dollar amount of the utility bill is so large that shut-off is unavoidable and payment of delinquent amounts impossible. In addition, this action will reduce account inquiries, partial payments, multiple collections efforts by Finance staff and increase efficiency.

Examination of the current two-tiered fee system for returned checks revealed that of the 694 checks returned by the bank through April 2003, 549 were a first returned check and were all charged a \$10.00 service fee. The \$10.00 fee does not recover costs. (Exhibit A)

AB 2643, signed into law effective January 1, 1997, provided the local retail community with the support to charge \$25.00 on each first returned check and \$35.00 for each subsequent returned check. At this time, Finance is not asking for an increase to each subsequent returned check.

continued

APPROVED: _____

H. Dixon Flynn
H. Dixon Flynn -- City Manager



CITY OF LODI

COUNCIL COMMUNICATION

Current analysis of late fee charges show that from May 2002 through April 2003, 47,181 occurrences of a \$5.00 late charge affected 14,151 accounts. Of that total, 4,149 accounts, with a one time occurrence of a late charge, support the theory that occasionally a customer may miss the due date due to a vacation or other one time occurrence. Municipal Code currently grants authority to the Finance Director to waive late fees when in his/her opinion a customer has presented reasonable evidence of financial hardship or convincing information that timely payment could not have been expected. (Exhibit B)

The remaining 10,002 accounts on Exhibit C have multiple occurrences of a \$5.00 late charge fee and then progress to the \$15.00 late charge, 60-days past due, signifying potential payment problems. The City and staff want to encourage customers to pay utility bills on a timely basis in full and to discourage delinquent utility bills and payments on account. Currently an average monthly utility bill with all four services is approximately \$150.00.

It is the policy of the City that the enterprise activities (electric, water, wastewater and solid waste) be efficiently managed and based on sound economic principles by following prudent business practices. In addition, this action will bring the City of Lodi in line with the California Municipal Utility Association (CMUA) survey of late charge fees of jurisdictions with utility services. (Exhibit C)

Funding: None


Vicky McAthle, Finance Director

Prepared by: M. Maxine Cadwallader, Revenue Manager

APPROVED: _____

H. Dixon Flynn -- City Manager

BILL NUMBER: AB 2643 CHAPTERED
BILL TEXT

CHAPTER 1000
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 1996
APPROVED BY GOVERNOR SEPTEMBER 27, 1996
PASSED THE ASSEMBLY AUGUST 30, 1996
PASSED THE SENATE AUGUST 21, 1996
AMENDED IN SENATE AUGUST 20, 1996
AMENDED IN SENATE AUGUST 5, 1996
AMENDED IN SENATE JUNE 17, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996

INTRODUCED BY Assembly Members Bordonaro and Kaloogian

FEBRUARY 21, 1996

An act to amend Section 1719 of the Civil Code, relating to commercial paper.

LEGISLATIVE COUNSEL'S DIGEST

AB 2643, Bordonaro. Commercial paper: insufficient funds.

Existing law creates a cause of action for the amount of a check passed on insufficient funds minus any partial payment made within 30 days of a specified written demand for payment, damages equal to treble that amount, as specified, plus the costs of mailing the written demand for payment only if the person who passed the check failed to pay either the amount of the check or the amount of the bad check fee charged to the payee by his or her financial institution within a prescribed period, except as specified.

This bill would revise and recast these provisions to create a cause of action for the amount of the check and a specified service charge, payable to the payee. The bill would provide that the person shall have 30 days from the date a prescribed written demand was mailed to pay the amount of the check, the service charge, and the cost to mail the demand. If the person fails to pay this amount in full, this person shall instead be liable for specified amounts, including treble damages. The bill would make conforming changes.

The bill would, among other things, provide that for purposes of the above provisions, the term "payee" includes an assignee or holder of the check.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1719 of the Civil Code is amended to read:

1719. (a) (1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a

written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars (\$100) nor more than one thousand five hundred dollars (\$1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to "pass a check on insufficient funds" means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b) For purposes of this section, in the case of a stop payment, the existence of a "good faith dispute" shall be determined by the trier of fact. A "good faith dispute" is one in which the court finds that the drawer had a reasonable belief of his or her legal entitlement to withhold payment. Grounds for the entitlement include, but are not limited to, the following: services were not rendered, goods were not delivered, goods or services purchased are faulty, not as promised, or otherwise unsatisfactory, or there was an overcharge.

(c) In the case of a stop payment, the notice to the drawer required by this section shall be in substantially the following

form:

NOTICE

To: _____
 (name of drawer)
_____ is the payee of a check you wrote
 (name of payee)
for \$ _____. The check was not paid because
 (amount)

you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge of an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

(1) The amount of the check.

(2) Damages of at least one hundred dollars (\$100) or, if higher, three times the amount of the check up to one thousand five hundred dollars (\$1,500).

If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing cost.

If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee.

You can contact the payee at:

 (name of payee)

 (street address)

 (telephone number)

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

 (name of sender of notice)

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand which, in that case, shall have been sent to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e) A cause of action under this section may be brought in small claims court by the original payee, if it does not exceed the jurisdiction of that court, or in any other appropriate court. The payee shall, in order to recover damages because the drawer instructed the drawee to stop payment, show to the satisfaction of the trier of fact that there was a reasonable effort on the part of the payee to reconcile and resolve the dispute prior to pursuing the dispute through the courts.

(f) A cause of action under this section may be brought in municipal court by a holder of the check or an assignee of the payee.

However, if the assignee is acting on behalf of the payee, for a flat fee or a percentage fee, the assignee may not charge the payee a greater flat fee or percentage fee for that portion of the amount collected that represents treble damages than is charged the payee for collecting the face amount of the check, draft, or order. This subdivision shall not apply to an action brought in small claims court.

(g) Notwithstanding subdivision (a), if the payee is a municipal court, the written demand for payment described in subdivision (a) may be mailed to the drawer by a municipal court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by a municipal court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by a municipal court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions. For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h) The requirements of this section in regard to remedies are mandatory upon a court.

(i) The assignee of the payee or a holder of the check may demand, recover, or enforce the service charge, damages, and costs specified in this section to the same extent as the original payee.

(j) (1) A drawer is liable for damages and costs only if all of the requirements of this section have been satisfied.

(2) The drawer shall in no event be liable more than once under this section on each check for a service charge, damages, or costs.

(k) Nothing in this section is intended to condition, curtail, or otherwise prejudice the rights, claims, remedies, and defenses under Division 3 (commencing with Section 3101) of the Commercial Code of a drawer, payee, assignee, or holder, including a holder in due course as defined in Section 3302 of the Commercial Code, in connection with the enforcement of this section.

5/29/2003

CITY OF LODI - FINANCE, REVENUE SECTION
PROCESSING COSTS FOR RETURNED CHECKS

EXHIBIT A

FINANCE - REVENUE

CSR II current hourly wage: \$16.62

Activity

Write acc. # , name on bank slip for identification, add \$10. to ck. amt, date crdited.

<u>TIME</u>	<u>COST</u>
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5 minutes	\$1.40
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Access R/C register, enter acc. #, \$ amt. of check. Key in \$10. or \$25. R/C fee.

5 minutes	\$1.40
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Key entries to computer to reverse credits, run reports.

3 minutes	\$0.84
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Make photocopies of check written to other departments - non utility.

5 minutes	\$1.40
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Verify entries on cash report, account #, \$ amount; edit to reports.

5 minutes	\$1.40
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2nd return check = \$25. charge; requires letter to customer "cash only status".

5 minutes	\$1.40
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Redeem returned check for customer, update utility account.

3 minutes	\$0.84
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F & M Bank charges

\$6.00

Sub Total (Office) Each Check

\$14.68

FINANCE - FIELD SERVICES

FSR = current hourly wage \$20.47

Activity

Physical delivery of 48 hour notice

15 minutes	\$5.25
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Physical shut off (requires 2 persons), Field Service Rep. II

25 minutes	\$17.50
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If paid, Physical Turn on (requires 2 person)

25 minutes	\$8.75
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Sub Total (Field) Each Check

\$31.50

Grant Total (Office and Field) Each Check

\$46.18

CITY OF LODI - FINANCE, REVENUE SECTION
PROCESSING COSTS FOR RETURNED CHECKS

EXHIBIT A	2
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Continual Shut Off Situation

Data entry and update list to include Issuer name, address, account #, \$ amt, Meter info/com.	5 minutes	\$1.75
Physical site visit to determine if service is still sealed or customer moved.	20 minutes	\$7.00
Continual maintenance of shut off list to determine credit and require deposit in future.	5 minutes	<u>\$1.75</u>

Additional Fees

\$10.50

Grand Total

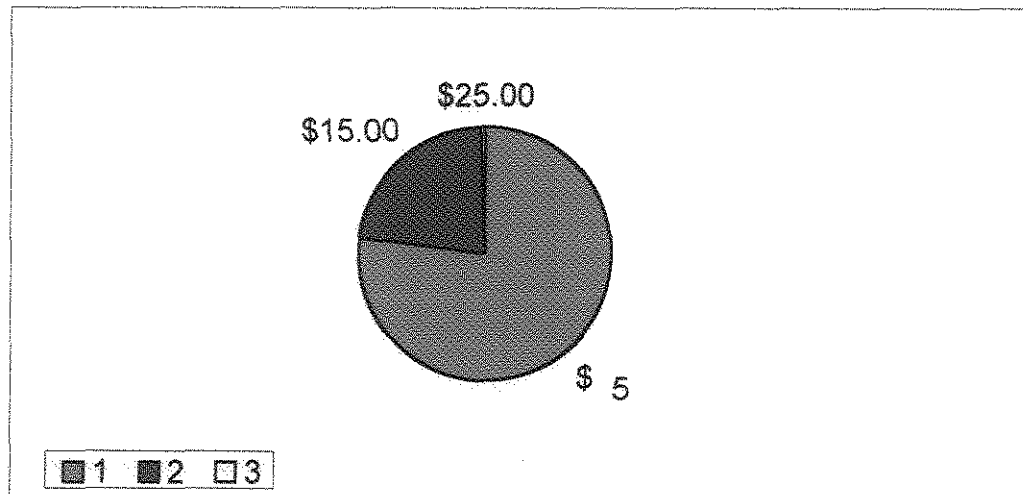
\$56.68

**CITY OF LODI -- FINANCE, REVENUE SECTION
LATE CHARGE ACTIVITY FROM MAY 2002 TO APRIL 2003**

EXHIBIT B

<u>\$5.00</u>			<u>\$15.00</u>			<u>\$25.00</u>		
Number of Accounts	Number of Occurrences	Total Numbers	Number of Accounts	Number of Occurrences	Total Numbers	Number of Accounts	Number of Occurrences	Total Numbers
4149	1	4149	2384	1	2384	87	1	87
2294	2	4588	1250	2	2500	24	2	48
1726	3	5178	872	3	2616	7	3	21
1603	4	6412	745	4	2980	9	4	36
1636	5	8180	493	5	2465	4	5	20
1456	6	8736	139	6	834	2	6	12
725	7	5075				2	7	14
310	8	2480				1	8	8
159	9	1431				1	9	9
71	10	710				1	10	10
22	11	242				2	11	22
<hr/> 14151		<hr/> 47181	<hr/> 5883		<hr/> 13779	<hr/> 140		<hr/> 287

\$5.00 47181
\$15.00 13779
\$25.00 287



LATE UTILITY CHARGE CMUA SURVEY

Exhibit C

ORGANIZATION	ASSESS LATE FEE	PCT./ FLAT FEE	AT WHAT POINT DO YOU ACCESS LATE FEE IN COLLECTION CYCLE	MINIMUM FEE	OTHER
City of Vacaville	Yes	10%	30 days after bill date	\$10	First late fee is \$10 or 10%, whichever is greater
City of Sunnyvale	Yes	5%	31 days from bill date	None	
City of Santa Clara	Yes	1.50%	25 days after the bill due date	\$5	1.5% of delinq. amt or \$5, whichever is greater
Modesto Irrigation District	Yes	1.5%	28 days after a bill is rendered	\$5	1.5% of delinq. amt or \$5, whichever is greater
City of Palo Alto	Yes	1%	On the 5th day after due date		Delinquent fees only for bal. of \$15 and more
City of Napa	Yes	\$10	45 days>end of billing period	\$10	
City of Lodi	Yes	\$5/\$15	\$5 at 27 days delinquent; \$15 assigned 30 days later	\$5/\$15	
Turlock Irrigation District	Yes	\$3+1 1/2%	15 days past bill due-date	\$3+1 1/2%	
Truckee-Donner Public Utility District	Yes	\$5/1.5%	When the nx bill is generated with a past due of at least \$25	\$5	
City of Roseville	Yes	\$10	21 days after bill is mailed	\$10	
City of Pleasanton	Yes	10%	30 days	None	
City of Redding	Yes	\$12	23 days from mailing	\$12	
City of Brentwood	Yes	5%	Late fee assessed on the first day after the due date	None	

RESOLUTION NO. 2003-137

A RESOLUTION OF THE LODI CITY COUNCIL
INCREASING FEE FOR RETURNED CHECK
CHARGES FROM \$10.00 TO \$25.00 FOR EACH FIRST
RETURNED CHECK AND INCREASING LATE FEES
FOR 30-DAY PAST DUE UTILITY BILLS FROM
\$5.00 TO \$10.00

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WHEREAS, Section 1719 of the Civil Code provides that damages equal to treble the amount of an insufficient funds check could be enforced under specific circumstances; and

WHEREAS, returned checks made payable to the City of Lodi have increased in the last six-year period; and

WHEREAS, an analysis of cost incurred by staff in an attempt to collect exceed \$25.00 for each check, and the total cost is currently \$56.68 excluding any cost by the accounting department to reverse entries and balance the bank reconciliation; and

WHEREAS, on September 27, 1996, Governor Wilson signed into law AB 2643, effective January 1, 1997, which provides that a check-writer of the dishonored check shall be liable to the "payee" (person named on the check) for a service charge in an amount not to exceed \$25.00 for the first check dishonored; and

WHEREAS, it is the policy of the City Council that the enterprise activities (electric, water, wastewater, and solid waste) of the City be efficiently managed and based on sound economic principles by following prudent business practices; and

WHEREAS, it is the policy of the City Council to encourage customers to pay utility bills on a timely basis in full and to discourage delinquent utility bills; and

WHEREAS, it is the policy of the City Council that City staff will be sensitive to customer hardships or other unusual and one-time circumstances that preclude timely payment of utility bills.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby increases the fee for a first check and all subsequent checks returned for non-sufficient funds, account closed, and referred to maker from \$10.00 to \$25.00 and increases late fees for 30-day past due utility bills from \$5.00 to \$10.00.

BE IT FURTHER RESOLVED by the Lodi City Council that this Resolution shall become effective immediately.

Dated: July 16, 2003

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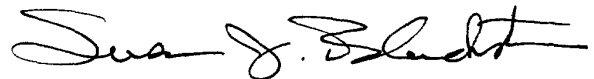
I hereby certify that Resolution No. 2003-137 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 16, 2003, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, and Land

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mayor Hitchcock

ABSTAIN: COUNCIL MEMBERS – None

A handwritten signature in black ink, appearing to read "Susan J. Blackston".

Susan Blackston
City Clerk